

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LYNDA CAROL MANLEY	:	CIVIL ACTION
	:	
v.	:	
	:	
ROY AUGUSTY, M.D., THE	:	
HORSHAM CLINIC, et al.	:	NO. 00-4904
O'NEILL, J.		APRIL , 2001

MEMORANDUM

Plaintiff Lynda Carol Manley has sued the Horsham Clinic, Roy K. Augusty, M.D. and unidentified attending physicians, nurses, orderlies and others (“staff defendants”). Augusty has moved to dismiss her amended complaint, which bases jurisdiction upon 42 U.S.C. §10801, et seq., 28 U.S.C.A. §§ 2201, 2202, 42 U.S.C. §§1983, 1988 and the Fifth and Fourteenth Amendments, for failure to state a claim upon which relief can be granted.

Manley alleges that she was involuntarily institutionalized at the Horsham Clinic, that en route to the Clinic and upon admission she told both transporting ambulance attendants and staff defendants that she had a painful condition in her right shoulder and left elbow, that after arrival at the Clinic staff defendants forced her to lie down on a hard mattress and applied bodily restraints on both of her arms. She alleges that she repeatedly cried out in pain, begging the staff defendants to let her up off her shoulder and to remove the restraints. She further alleges that after one day staff defendants removed the restraints but thereafter again placed her in bodily restraints despite her crying out in pain, screaming loudly and begging that they be removed. Plaintiff asserts that she suffered injury as a result of defendants’ conduct.

The amended complaint asserts that Augusty was the psychiatrist responsible for the decisions regarding the use of bodily restraints at the Clinic and that he saw Manley in restraints

but did nothing in response to her cries of pain and requests that she be released from the restraints.

In order to establish a violation of § 1983, plaintiff must show that her federal statutory or constitutional rights were violated. See Flagg Bros., Inc v. Brooks, 436 U.S. 149, 155 (1978). In Count I of her complaint plaintiff invokes § 1983 by alleging a violation of 42 U.S.C. § 1081 et seq., the Protection and Advocacy for Individuals with Mental Illness Act. It is well-settled that this statute does not create a private right of action; the precatory language of this statute merely expresses a Congressional preference for certain kinds of treatment. The seminal decision on this issue was issued by my colleague Joseph S. Lord, III, in Brooks v. Johnson and Johnson, Inc., 685 F. Supp. 107 (E.D. Pa. 1988). See also Monahan v. Dorchester Counseling Center, Inc., 961 F.2d 987 (1st Cir. 1992); Duffy v. Delaware Co. Bd. Of Prison Inspectors, Civ. A. No. 90-9125, 1991 WL 193404 (E.D. Pa. Sept. 18, 1991).

Manley also alleges a violation of § 1983 under the Fifth and Fourteenth Amendments. To succeed she must prove that she was (1) deprived of her right to life, liberty or property without due process of law; (2) by a state actor. Paragraph 5 of the amended complaint alleges in part:

5. Defendant the Horsham Clinic is a mental health treatment facility which admitted Plaintiff on the strength of involuntary admission forms and in so doing acted under color of state law, since it was only by being clothed with authority of state law that it possessed power to commit her on the strength of said forms.

The factual allegations of Paragraph 5, if proved, would not be sufficient to establish that Augusty acted under color of state law in violation of § 1983. See Janicko v. Pellman, 774 F. Supp. 331, 339 (M.D. Pa. 1991), affirmed without published opinion, 970 F.2d. 599 (3d. Cir.

1992)(“this court cannot say that the involuntary commitment of the mentally ill by private physicians and hospitals is. . . a function compelled by or sufficiently connected to state directives to attribute those actions to the state”); See also Bodor v. Horsham Clinic Inc., Civ. A. No. 94-7210, 1995 W.L. 424906 (E.D. Pa. July 19, 1995) and Covell v. Smith, Civ. A. No. 95-501, 1996 W.L. 750033 (E.D. Pa. Dec. 30, 1996)(both holding that the involuntary commitment of the mentally ill in the Horsham Clinic does not constitute state action for the purposes of § 1983).

With respect to Manley’s claim under § 1988, the Supreme Court reviewed that statute’s legislative history in Moor v. County of Alameda, 411 U.S. 693 (1973), and concluded that its provisions were remedial only and did not create an independent federal cause of action. As the court in Reed v. Philadelphia Housing Authority, 372 F. Supp. 686, 698-99 (E.D. Pa. 1974), stated,

Section 1988 does not enjoy the independent stature of an ‘act of Congress providing for the protection of civil rights,’ 28 USC § 1343(4). Rather, as is plain on the face of the statute, the section is intended to complement the various acts which do create federal causes of action for the violation of federal civil rights. Thus, § 1988 specifies that ‘the jurisdiction in civil and criminal matters conferred on the district courts by the provisions of [titles 13, 24, and 70 of the Revised Statutes], for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised in conformity with the laws of the United States.’ But inevitably existing federal law will not cover every issue that may arise in the context of a federal civil rights action. Thus, § 1988 proceeds to authorize federal courts, where federal law is unsuited or insufficient ‘to furnish suitable remedies,’ to look to principles of the common law, as altered by state law, so long as such principles are not inconsistent with the Constitution and laws of the United States.

Accordingly, Count I of the amended complaint will be dismissed with respect to

defendant Augusty.¹ Having dismissed plaintiff's federal claims, I decline to exercise jurisdiction over plaintiff's state law claims, which will be dismissed without prejudice. 28 U.S.C. § 1367(c)(3).

An appropriate Order follows.

¹ Plaintiff also cites 28 U.S.C.A. §§ 2201, 2202, the Declaratory Judgment Act, as a basis for jurisdiction. "[T]he operation of the Declaratory Judgment Act is procedural only. [In passing this statute] Congress enlarged the range of remedies available in the federal courts but did not extend their jurisdiction." Franchise Tax Bd. of State of California v. Construction Laborers Vacation Trust for Southern California, 463 U.S. 1, 15 (1983)(citations omitted).

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NO. 00-4904

ORDER

AND NOW, this Day of April, 2001, defendant Augusty's motion to dismiss is
GRANTED and:

1. Count I of the amended complaint against defendant Augusty is DISMISSED for failure to state a claim.
2. Counts II, III and IV of the amended complaint against defendant Augusty are DISMISSED without prejudice.

THOMAS N. O'NEILL, JR., J.